

# Introduction to Wild and Scenic Rivers

River Management Society  
Symposium

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*Thomas O'Keefe,  
American Whitewater*





*Christina Boston,  
U.S. Forest Service*

# The Wild and Scenic Rivers Act of 1968

As Amended



# Genesis

- Convergence of efforts
- From opposition to protection







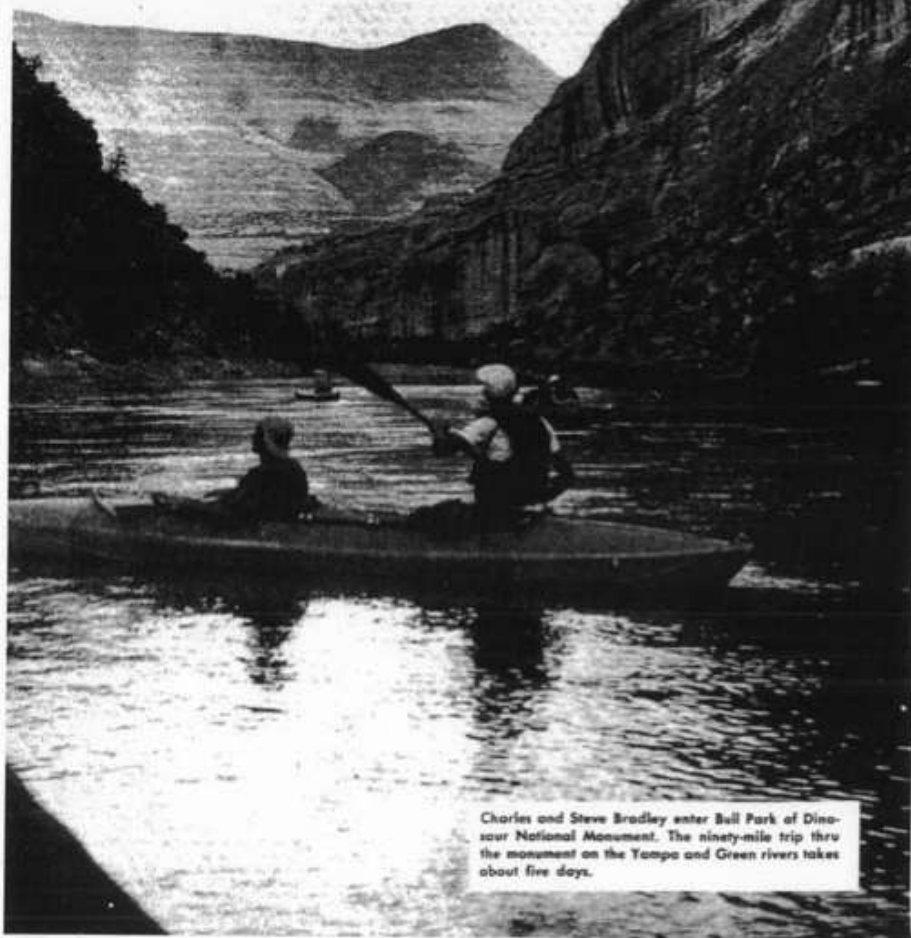
**B 553** Looking up Hetch-Hetchy Valley from Surprise Point.

*Tuber's* Photo., San Francisco.



# ECHO PARK DAM Is It Needed Now?

by Stephen J. Bradley  
Pictures by Harold C. Bradley and  
Dave Stacey



Charles and Steve Bradley enter Bull Park of Dinosaur National Monument. The ninety-mile trip through the monument on the Yampa and Green rivers takes about five days.









# Genesis

- “Wild” rivers only
- Inclusive of remote to highly developed





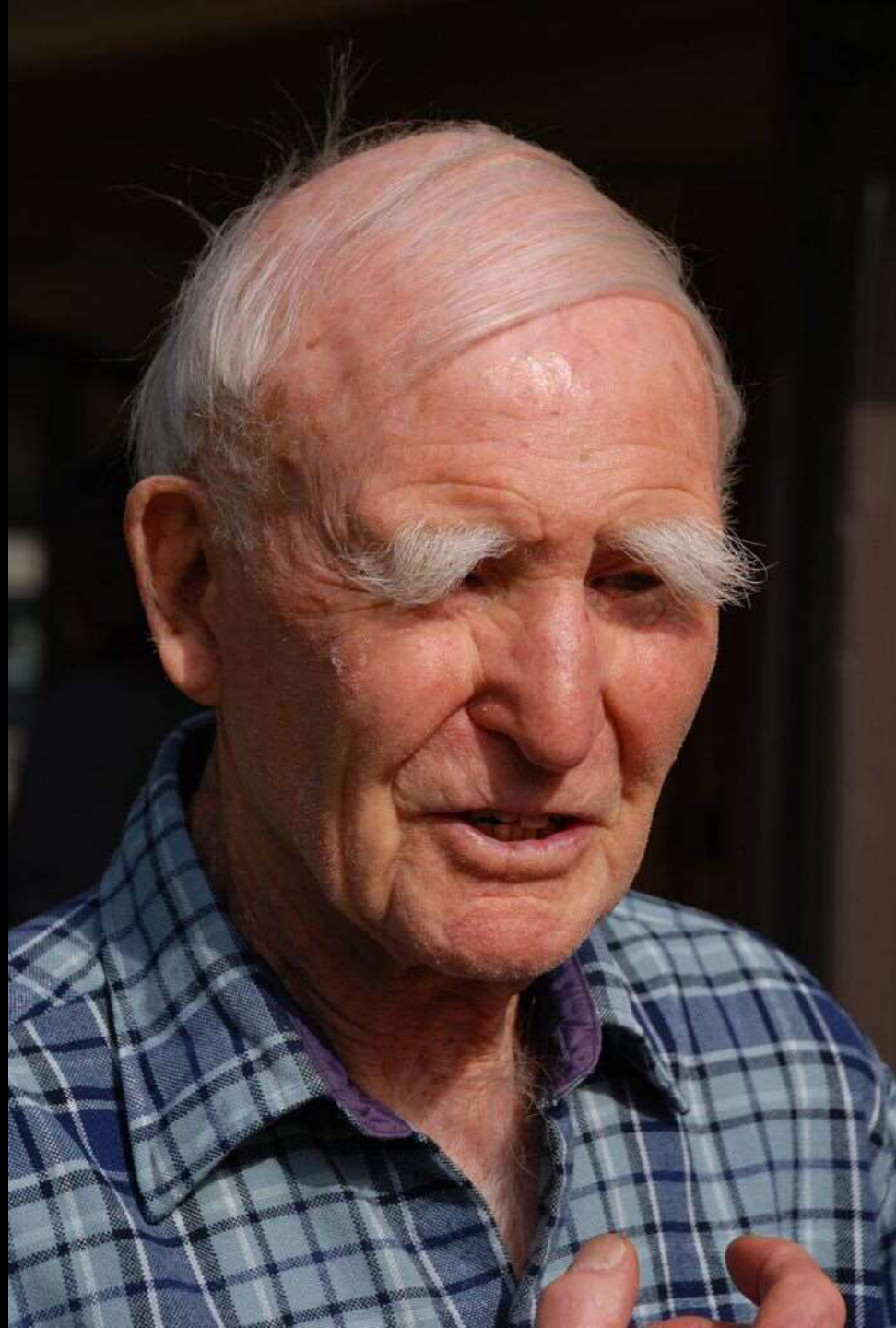


Two boatmen drift through wilderness on a wild river.

## Wild River

From a Letter by Dr. John Craighead, Leader, Montana Cooperative Wildlife Research Unit

- Wild rivers: inaccessible except by trail that are free of impoundments
- Semi-wilderness rivers: accessible by road; watersheds are still largely in virgin condition
- Semiexploited Rivers: easily accessible by road and close to urban areas; heavy land use; upper reaches still unimpounded
- Exploited Rivers: impoundments, artificial channeling and dyking, and exhibiting varying degrees of pollution



1958

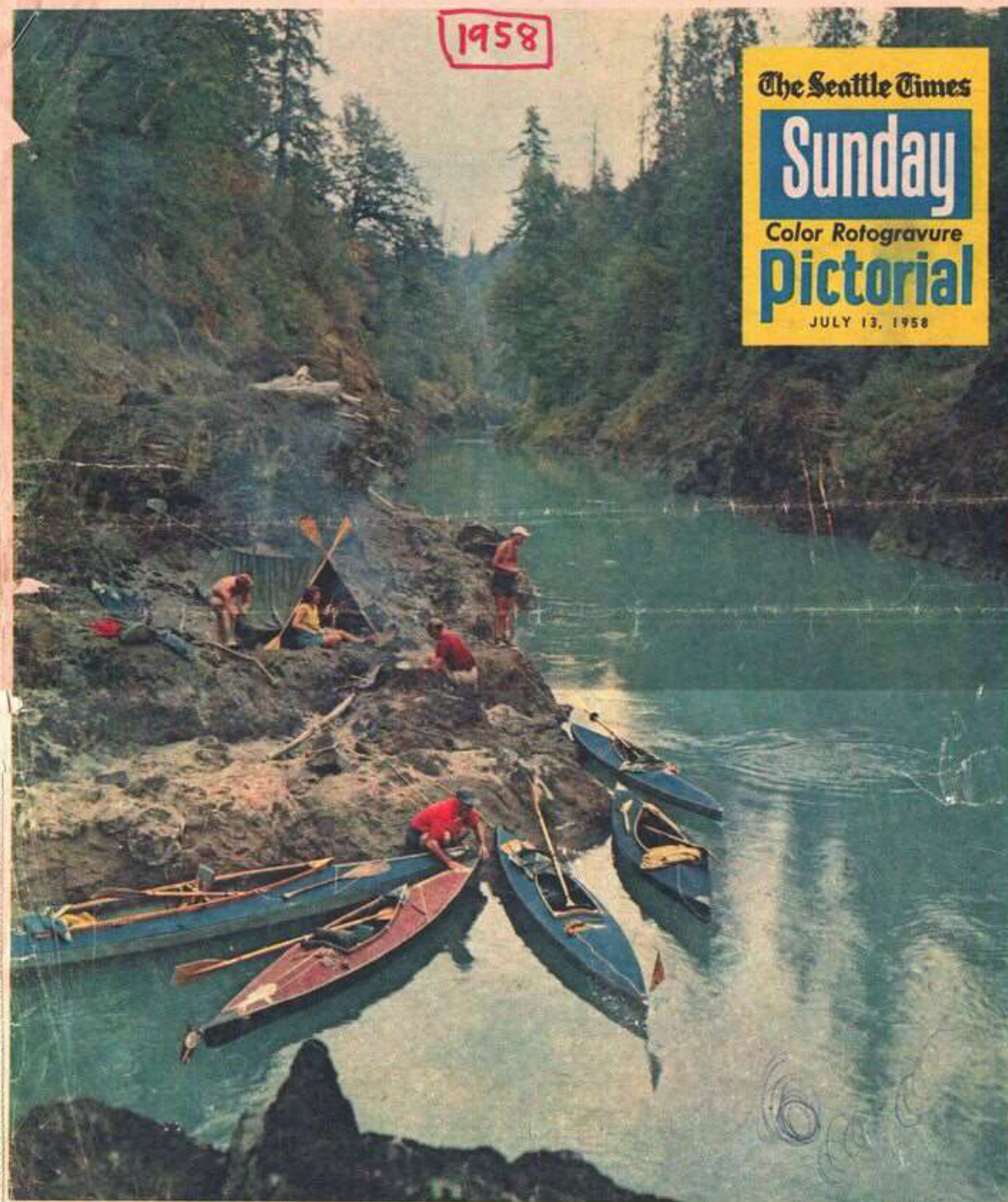
The Seattle Times

Sunday

Color Rotogravure

Pictorial

JULY 13, 1958



**Foldboaters' Camp in a Cowlitz River Canyon**

Photo by Bob and Iva Spring

1958





Rogue Valley Chapter No. 1  
VETERANS  
FOR  
PEACE



Horses laden with kayaks and raft, Bob Marshall Wilderness.—Photos by Dorothy Hawksley

## Pioneering the Flathead

By Oz Hawksley  
AWA Trip Planning Chairman

For a number of years the Trip Planning Committee has made attempts to get an AWA group onto the two wilderness branches of the Flathead in Montana. Again in '64, trips were planned for both the Middle Fork and the South Fork of the river. Not wishing to be thwarted again by low water, we planned the trips for late June and early July. Surely, we thought, there would be plenty of water that early in the season. As it turned out, we were more right than we wished.

First trip of the season was a base-camped affair with a dozen or more members from the Midwest participating in runs on the Bois Brule and the upper Flambeau in Wisconsin. By mid-

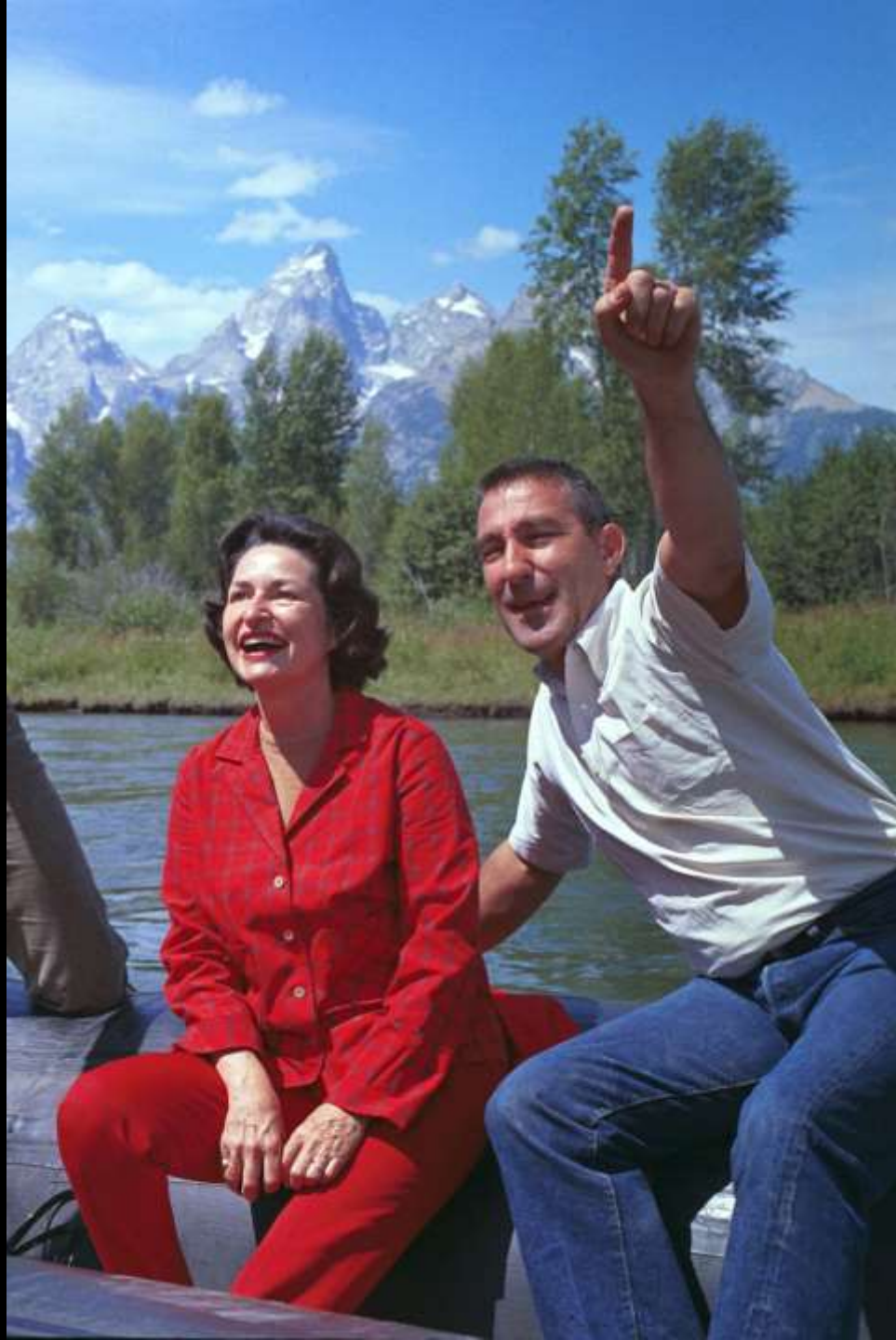
June we were headed for Montana's Flathead country with canoes and rafts. By the time we reached Bismarck, we began to get news of floods in the Glacier Park area. Something like eleven inches of warm rain on top of heavy snow had caused extensive damage and there were rumors that Glacier Park would not open for the '64 season.

From a base in Whitefish, Montana, we began to survey the damage to the area and the ways in which it might affect our Middle Fork trip. We finally flew up the river to our proposed put-in at Shafer Meadow. Although we couldn't get much lower than 3,000 feet we could see that the river was still too high and dangerous for our families.



**“We hope to make the Potomac a model of beauty here in the Capital, and preserve unspoiled stretches of some of our waterways with a Wild Rivers bill.”**





# Genesis

- Passage of the WSRA
  - 8 Designated rivers
  - 27 Congressionally authorized study rivers







To Congressman John Saylor  
With best wishes, *Raymond [Signature]*







Rogue, OR

**“The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.”**

# Intent of the WSRA

- **Complement to national policy of dam and other construction**
- **Protect and enhance a designated WSR's free-flowing condition, water quality, and outstandingly remarkable values**
- **Establish a process through which additional rivers are considered for inclusion in the National System**







# Intent of WSRA

To complement the national policy of dam and other construction



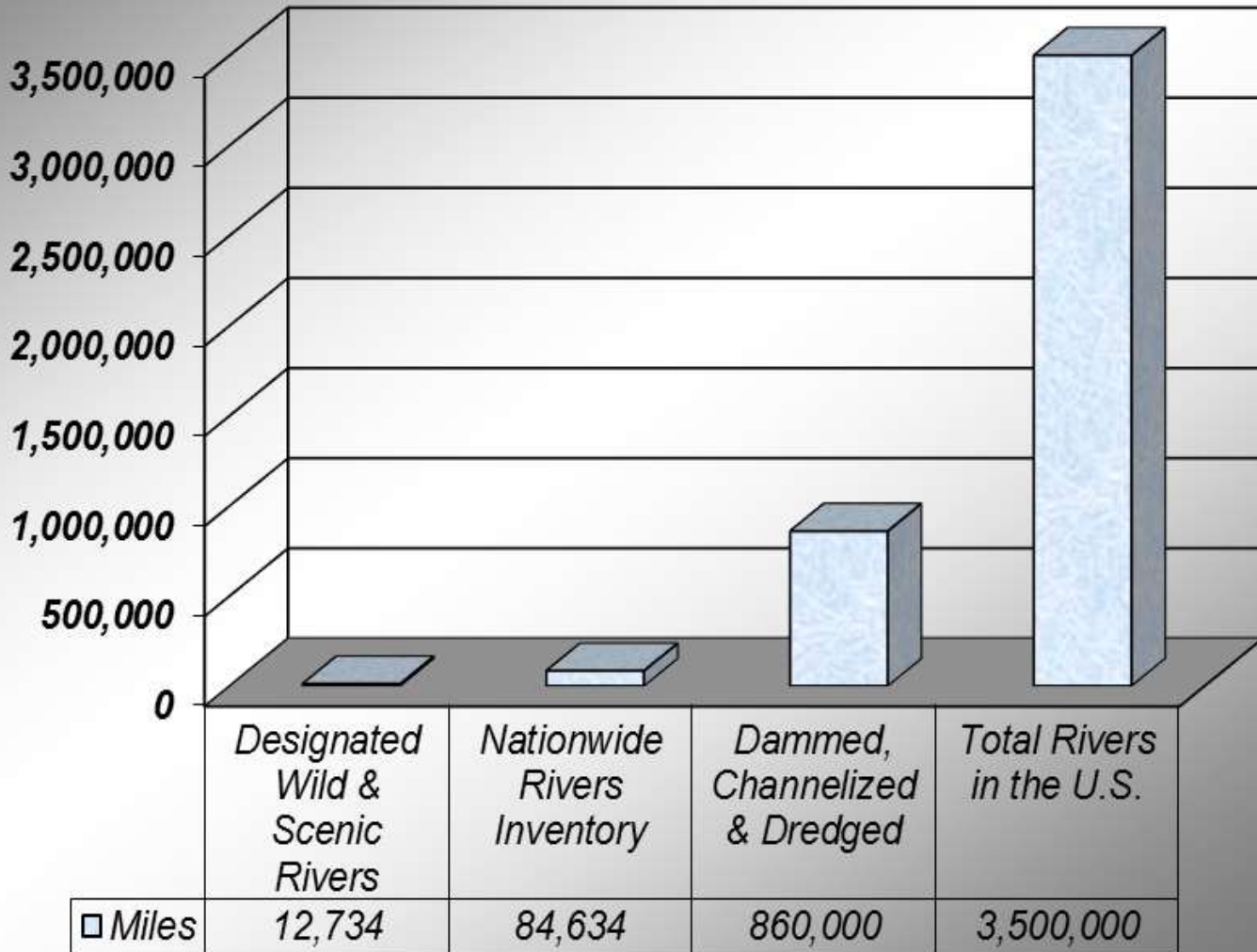


- 860,000 river miles dammed, dredged or channelized
- 24% of rivers affected

- 12,754 river miles protected under WSRA
- Less than 1/4 of 1% of our rivers are protected under the National Wild & Scenic Rivers System.



## America's River System





# National System

- Diverse
  - Values and Settings
  - Size and Configuration
  - Protective Management















# National System

- Not representative
  - Social
  - Political
- All share protections



# Historical Legacy

- A complement to a policy of damming & development
- A vision of free-flowing rivers for future generations
- A systematic approach to protection of outstanding river values





# Key Provisions Overview



# Declaration of Policy

## Section 1(b)

“...declared to be the policy of the United States that certain selected rivers...

...be protected for the benefit and enjoyment of present and future generations.”





“...for the benefit and enjoyment of present and future generations...”



Middle Fork Snoqualmie, WA















# Declaration of Policy

## Section 1(b)

- Protect Values
  - Free-flowing condition
  - Water quality
  - ORVs
- Define ORVs
  - Guide future management actions
  - Basis for boundary
  - Baseline for monitoring





“...free flowing condition...”



North Fork American, CA



“...protect the water quality...”







Middle Fork Salmon, ID

“...outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values...”



Fossil Creek, AZ



Rio Grande, NM

# Defining ORVs

- Scenic
- Recreational
- Geologic
- Fish and Wildlife
- Historic
- Cultural
- Other Similar Values





# Resource Assessment

- National criteria for ORVs
- Developed by a WSR Interagency Team
- Response to 40 rivers added in 1988
- IWSRCC Study Paper
- FSH 1909.12 Chapter 80



# When is a value an ORV?

- ORVs
  - River-related
  - Unique, rare or exemplary
  - An inventory





# River-Related Values

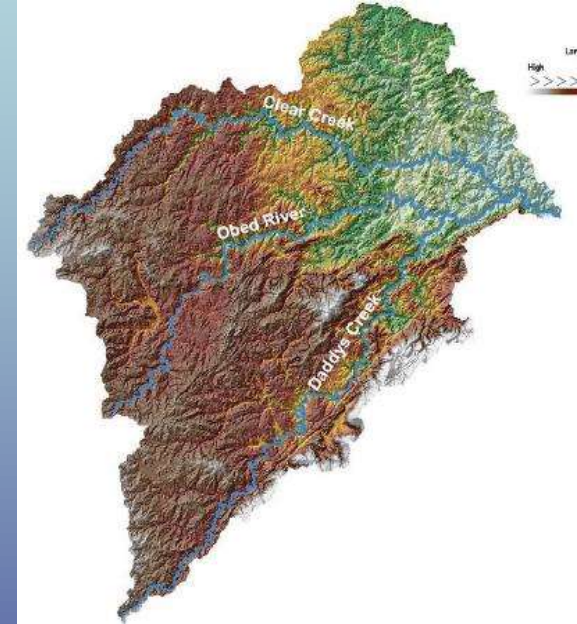
- Located within the river or its immediate shorelands
- Contributes substantially to the function of the river ecosystem
- Owes its existence to the presence of the river



# Regional significance

## Delineate appropriate regions

- Compare rivers with similar characteristics
- Comparative regions may be resource-specific





# Process and Findings

- Consistent
- Replicable
- Defensible





Photo by William Saunders



# System Composition

- Sections 2(a)(i) and 2(a)(ii)
  - 2(a)(i) – Act of Congress
  - 2(a)(ii) – Secretary of Interior at request of Governor





Northern California Conservation and  
Recreation Act









Indian Creek, California Coast Heritage Protection Act







# Classification





# Classification System

## Section 2(b)

- Three classes
  - Wild, Scenic and Recreational
- Describes type/intensity of existing development
- Framework for future land management activities
- Protections in Sec. 7(a) and 10(a) independent of classification



# River Classification

## Wild





A scenic view of a river winding through a valley. The river flows from the left towards the center, then curves to the right. The surrounding landscape is covered in dense forest with trees in various shades of green, yellow, and orange, indicating autumn. In the foreground, there are large, open fields with a golden-brown hue. The background shows rolling hills and mountains under a cloudy sky. The overall scene is peaceful and picturesque.

Scenic

**River Classification**



# River Classification

A scenic view of a river flowing through a lush green forest. A large, multi-story wooden building with a brown roof is situated on the left bank. The river has a rocky bed and is surrounded by dense vegetation.

Recreational



# Boundary



## OAK SPRINGS - LOWER DESCHUTES RIVER

Oregon Parks & Recreation Dept.  
725 Summer St. NE, Suite C  
Salem OR, 97301



### Legend

— State\_Scenic\_Waterway\_Corridor

This product is for informational purposes and may not have been prepared for, or be suitable for, legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

Oregon Lambert Projection  
Datum NAD 83



0 1,000 2,000 Feet

06/16/2017  
http://www.oregon.gov

# Key Provisions

## Boundary

- Sections 3(b) and 3(c)
  - Detailed lateral corridor
  - Best protect values





# Boundary

Sections 3(b) and (c)

- Bank-to-bank unacceptable
- ORVs - basis for establishment
- Does not need to be marked on the ground
- Publish Notice of Availability in Federal Register
- Effective 90 days after transmittal to Congress



# Management Plan





# Management Plan

Sections 3(d)(1) and (d)(2)

- 1986 generic amendment
- Requires Comprehensive Management Plan
  - ORVs, Goals, Desired Conditions
  - Land/Facility Development
  - User Capacities
  - Water Quality and Instream Flow
  - Collaborative Approach
  - Regulatory Authorities
  - Monitoring









# Management Plan

Sections 3(d)(1) and (d)(2)

## ➤ Programmatic Plan

- National Environmental Policy Act (NEPA)
- Developed consistent with agency plans
- Publish Notice of Availability in Federal Register



# User Capacities

Section 3(d)(1)

CRMP shall address:

- Resource protection
- Development of lands and facilities
- **User capacities**
- Other management practices necessary or desirable

Reinforced by Courts











Selway, ID



# Addressing User Capacity

- Connect user capacity discussions to protecting and enhancing river values
- Make clear rationale for method chosen to address user capacities
- Use good NEPA sense



# User Capacity Process

## 9 Steps

1. Describe the baseline and current conditions and uses for the WSR Desired conditions for values and classifications
2. Identify desired conditions for river values and classifications
3. Identify the kinds of use that the WSR corridor can accommodate





# User Capacity Process

## 9 Steps

4. Identify measurable indicators for the desired conditions
5. Establish thresholds for each indicator
6. Identify triggers that elicit management response
7. Identify management actions to take when triggers are reached



# User Capacity Process

## 9 Steps

8. Determine the WSR corridor's user capacity
9. Establish a monitoring and adaptive management approach





# Key Provisions

## Section 5

### Wild and Scenic River Studies

- Section 5(a) - sets out the process for evaluating specific rivers Congress identifies as potential additions to the System as legislatively mandated study rivers
- Section 5(d)(1) - directs Federal agencies to identify and evaluate additional potential rivers for inclusion in the System during Agency planning



# Acquisition Procedures and Limitations

## Section 6

- Acquisition of lands/interest in lands
  - Sometimes appropriate
  - Does not apply to 2(a)(ii) rivers
- Establish general principles in CRMP







# Key Provisions

## Water Resources Projects

- Section 7(a)
  - Heart of the Act
  - Standards of Evaluation based on:
    - Location and federal assistance

*Multiple legal challenges*





# Intent of Section 7

- Keep rivers *free flowing*
- Protect from harmful effects of *water resources projects*



# Free Flowing

Section 16(b)

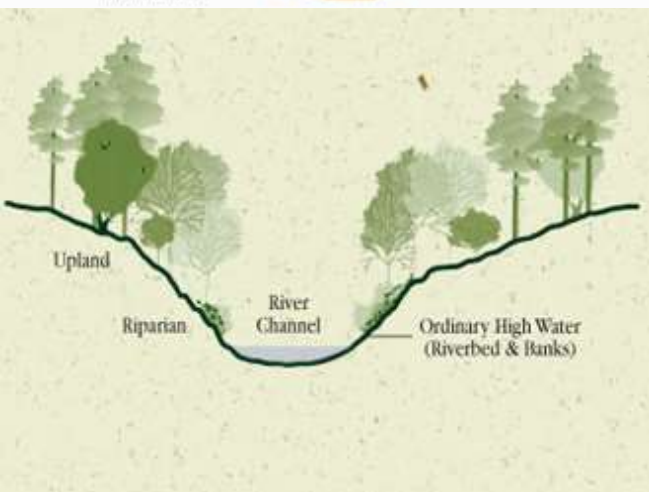
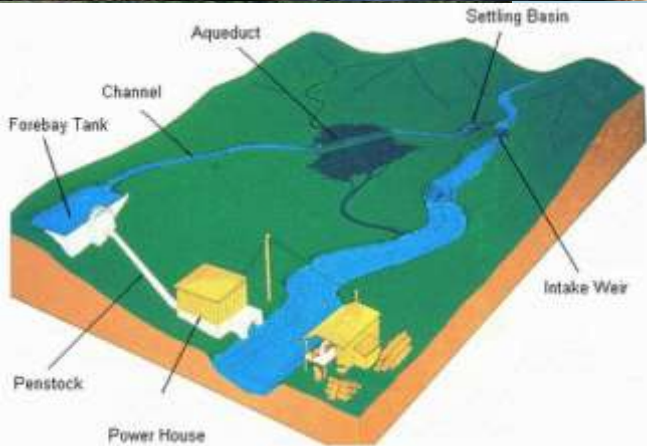
“...existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping or other modification of the waterway.”





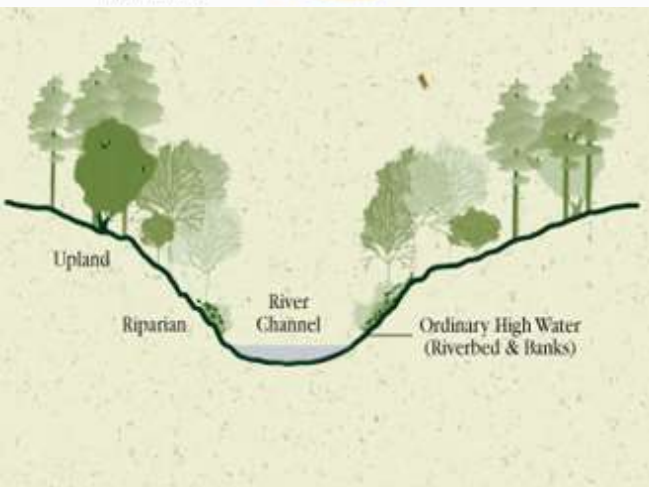
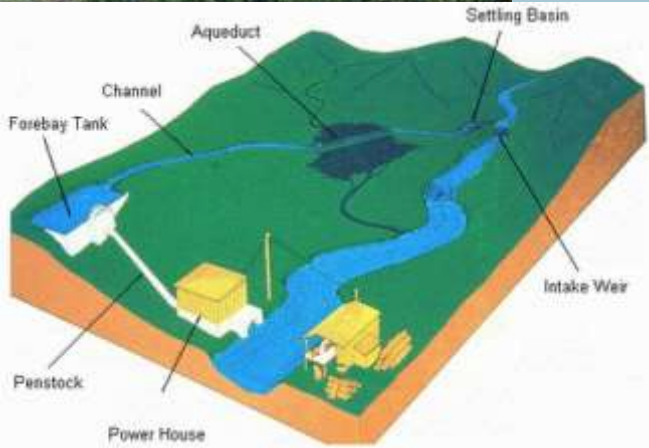
# Water Resources Project

36 CFR 297.3



- Hydropower project licensed by FERC
- Federally assisted project with potential to affect free-flowing characteristics

# Potential To Affect Free Flow



## Activities in the waterway

- River's bed and banks
- Below OHWM of the river
  - 33 CFR 328.3(e)
- Federally assisted
  - 36 CFR 297.3



# Three Standards

## Section 7(a)

- *On or directly affecting*
- *Direct and adverse effects*
- *Invade the area or*  
*unreasonably diminish*



# Which Standard Applies

Depends on:

- Federal assisting agency
- Project location
  - Inside or outside of a WSR corridor
  - Designated or congressionally authorized study river





# Section 7(a)

“The Federal Power Commission [FERC] **shall not license the construction** of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works **under the Federal Power Act,**

as amended, on or directly affecting any [designated WSR]...”



# Section 7(a)

“...no department or **agency** of the United States

**shall assist**

by loan, grant, license, or otherwise in the

**construction of any water resources project**

that would have a **direct and adverse effect** on the values for which such river was established”





# Section 7(a)

“**Nothing** contained in the foregoing sentence shall

**preclude licensing of, or assistance to, developments below or above a wild, scenic or recreational river area or on any stream tributary thereto which will not**

**invade the area or unreasonably diminish**

**the scenic, recreational, and fish and wildlife values present in the area on the date of designation of a [WSR].”**



# Section 7(b)

Only applies to congressionally authorized study rivers

- Same as Section 7(a) for WRP within a designated corridor
- Nearly identical to section 7(a) for WRP outside a designated river corridor





# Statutory Requirements for Evaluation of a Water Resources Project

| Within the WSR Corridor                        |                            | Study Rivers outside the Corridor                 |  |
|--|----------------------------|---|--|
| Proposed hydropower facilities (FERC-licensed) | On or directly affecting   | Proposed hydropower facilities (FERC-licensed)    | Invade the area or unreasonably diminish |
| Other proposed federally assisted WRPs         | Direct and adverse affects | Other proposed federally assisted WRPs            | Invade the area or unreasonably diminish |
| To Free Flow, Water Quality, and ORV's         |                            | To Scenic, Recreational, Fish and Wildlife Values |  |



# Outcomes

- Adverse effects
- Adverse effects
  - avoidance measures
- No adverse effects





# Lands and Minerals



# Key Provisions

## Withdrawals

- Section 8(a)
  - Retain all public lands within WSR corridor
  - Provides for:
    - Exchange (6)(d)
    - Lease (14A(a))







# Limitations on Mineral Entry

## Section 9(a)

- Wild river areas withdrawn
  - Mining and mineral leasing
- Valid existing rights protected
- Patent to mineral only and reasonable surface use
- Scenic and recreational classified segments **not** withdrawn





# Management Direction





# Key Provisions

## Management Direction Section 10(a)

- Protect and Enhance
  - Nondegradation/enhancement policy
  - Protect by eliminating adverse effects
  - Enhance by improving conditions
- Public recreation/use must not adversely impact/degrade values







Fossil Creek, AZ



# Management of WSRs in Wilderness

Section 10(b)

- More restrictive provisions
- Recognizes importance of designating systems





## Section 10(c) – WSRs Administered by NPS and USFWS

## Section 10(d) – WSRs Administered by USFS

- Allows USFS to require special-use permits for commercial guiding services

## Section 10(e) – Cooperative Agreements

- The States and their political subdivisions shall be encouraged to cooperate in the planning and administration of components of the system which include or adjoin State- or county-owned lands.



# Cooperative Management





# Key Provisions

## Federal Assistance

- Section 11(b)(1)
  - Authorizes technical assistance and limited financial assistance
  - Applies within and proximate to designated WSR









# Management Policies



# Key Provisions

## Management Policies

- Section 12(a)
  - Direction to other federal agencies to protect WSR values
  - References activities within or proximate





# Key Provisions

## Existing Rights

- Section 12(b) – Qualifies that existing rights or privileges affecting federal lands cannot be eliminated without owner's consent
- Section 12(c)
  - Water pollution



# Key Provisions

## Water Pollution

- Section 12(c)
  - WSR-administering agency should work in cooperation with EPA/state water quality agency
  - Enforcement through EPA/state agency





# Jurisdiction



# Key Provisions

## Jurisdictions

- Section 13
  - Fish and Wildlife
  - Processing water rights
  - Interstate compacts
  - Navigable rivers
  - Federal reservation of water





# Jurisdiction of State for Fish and Wildlife

Section 13(a)

- Preserves state role with respect to fish and wildlife
- WSR-administering agency should develop an effective partnership with state



# Federal Reservation Of Water

Section 13(c) and 13(e)

- Establishes a federal reserved water right
- Quantity necessary to achieve purposes
- Describe ORV dependency on flow in CRMP
- Interstate compacts unaffected (13(e))





# Navigable Rivers

Section 13(f)

- State's rights to navigable waterways unaffected by the WSRA
- Work in partnership with state to assure state's public trust interest and meeting purposes of the WSRA
- Consult with legal counsel early if regulating use is being considered



# Easements and ROW

Section 13(g)

- Easements on federal lands subject to conditions to protect values
- Evaluate in-channel component of easement proposal as WRP







# WSRA: Key Provisions

- Three-fold purpose—Free-flowing condition, water quality and ORVs
- Boundary required—Flexible boundary of up to 320 acres/river mile in lower 48 or as specified, and 640 acres for rivers added under ANILCA (except rivers in national parks)





# WSRA: Key Provisions

- CRMP—WSRA requires a comprehensive management plan to protect and enhance values
- Section 7(a)—Protects WSRs from the harmful effects of water resources projects



# WSRA: Key Provisions

- Section 10(a)
  - Nondegradation and enhancement policy
- Section 12 (a)
  - Directs all federal agencies to protect WSR values







# Acknowledgements

## Interagency Wild & Scenic Rivers Coordinating Council



[www.rivers.gov](http://www.rivers.gov)

## River Management Society



[www.river-management.org](http://www.river-management.org)







# YOUR QUESTIONS

